

US Federal District Court
Western District, Michigan

FILED

February 1, 2021 2:29 PM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: mkc SCANNED BY: JW / 2/1

In re Philip C. Bellfy, Martin Reinhardt,
Nathan Wright, Adel Easterday, Mari Negro,
Leslie Negro, Sally G. Voorhees, Nancy Lee
Ellinger, Alvin W. English, Kathleen A.
English, Scott Alan Wyzlic, Pamela C. Smith-
Bell, Susan Kay Henry, Sharon L. Brown. Judy
M. Stock, Julianne M. Flores, Jacqueline
Pierce, Donald Chartier, Debra LeBlanc, John
J. Fishback, Jessica Price, Michael Vokits,
Amanda Vokits, Camomilia Bright, Janet M.
Stowe, Catherine Ann Williams, James C.
Page, Christina Bruner, Thomas Curry,
Richard Sauermilch, Joseph P. McCarthy,
Donald J. Cooper, Debby Sirk, David Hansen,
Robert Roy Kennedy, Mary Karen Martin,

Judge _____

2:21-cv-25

Hala Y. Jarbou
U.S. District Judge

ex rel. State of Michigan,

FOR IMMEDIATE CONSIDERATION

Petitioners

Emergency Petition for Writ of Mandamus to Enforce
Section 3 of the Fourteenth Amendment

Immediate and *ex parte* consideration is requested due to the simple fact that the shameful action by Rep. Bergman (R-MI-1) on Jan. 6 in the House of Representatives to “decertify” election votes in several states, including Michigan, only serves to emphasize the danger he poses to the Constitution and the Rule of Law. This action, and his previous action in a closely related lawsuit, is a clear violation of the US Constitution and US Statutes, detailed below.

Representative Jack Bergman is the highest-ranking military official ever elected to the United States Congress, and, as such, he bears a heightened responsibility -
-sworn under oath-- “to support and defend the Constitution of the United States against all enemies, foreign and domestic.” Furthermore, 18 USC 115 §2381, defining Treason, states: Whoever, owing allegiance to the United States [that is, anyone taking any “oath of office”], levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.” (emphasis added).

This Writ is being filed due to the simple fact that Rep. Bergman has clearly violated the oaths he has taken in direct violation of the Constitution he has sworn to defend. Violation of his oath is also a criminal act.

Petitioners

Petitioners are American Indian Veterans, and other registered voters, living and voting in Michigan's 1st Congressional District, and, as such, they clearly have the required standing to bring this Writ before this Court based on the arguments that are laid out in this Petition. All Petitioners have taken oaths, either as members of the military, or as public employees, to defend the Constitution, as has Rep. Bergman, as noted above.

Pursuant to the All Writs Act, 28 U.S.C. §1651, and FRAP Rule 21(c), Philip C. Bellfy (PhD), et al, "Oath-takers" and Citizen Petitioners, respectfully request that this Court issue a Writ to grant any relief it deems appropriate, and to enforce the mandate of Sec. 3 of the 14th Amendment of the US Constitution, to wit:

No Person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Facts of this Case

Our Congressional Representative (Jack Bergman, 1st District, Michigan), along with at least 125 others, signed on to an Amicus Brief filed with the Supreme Court asking it to invalidate our votes (in Michigan) and "untold millions" of others in an attempt to threaten and

intimidate us, and to invalidate our votes in clear violation of 18 USC 241. Although primarily designed to protect the right to vote (*Gressman*, supra note 26, at 1345; see *Ex parte Yarbrough*, 110 U.S. 651, 665 (1884)), Section 241 also has reached the right to have one's vote counted fairly (*United States v. Mosley*, 238 U.S. 383, 386 (1915)). Because their conspiracy expressed the intent to change the outcome of a federal election, the clear purpose of those who signed the Amicus Brief was to cause a constitutional deprivation. The Supreme Court long ago recognized that the right to vote for federal offices is among the rights secured by Article I, Sections 2 and 4, of the Constitution, and hence is protected by Section 241. *United States v. Classic*, 313 U.S. 299 (1941); *Ex parte Yarbrough*, 110 U.S. 651 (1884).

It is a Section 241 violation to threaten, or intimidate a voter in the exercise of her right to vote, *Fields v. United States*, 228 F.2d 544 (4th Cir. 1955); In *United States v. Mosley* (238 U.S. 383, 35 S. Ct. 904, 59 L. Ed. 1355 (1915)), it was ruled that a conspiracy that involved an effort to deny the results of votes as cast was a deprivation of rights under the Constitution. Section 241 does not require that the conspiracy be successful, as this “Amicus Conspiracy” clearly was not. *United States v. Bradberry*, 517 F.2d 498, 499 n.6 (7th Cir. 1975). Section 241 reaches conduct affecting the integrity of the federal election process as a whole, and does not require fraudulent action with respect to any particular voter. *United States v. Nathan*, 238 F.2d 401, 407 (7th Cir. 1956). (All of the Section 241 arguments and citations above from: <https://www.justice.gov/criminal/file/1029066/download>). While the Petitioners are well aware of the fact that Section 241 does not grant them a “private cause of action”; this action is for a Writ of Mandamus under 28 U.S.C. §1651, pursuant to Section 3 of the 14th Amendment to the US Constitution (“14-3”).

Sedition

The "Amicus Action" by 126 US House members, to overturn the election results in several states has been called "sedition" by at least one Attorney General of one state that the Amicus Brief targets:

More than two dozen states filed motions with the Supreme Court on Thursday opposing Texas' bid to invalidate President-elect Joe Biden's wins in four battleground states, a long-shot legal move that Pennsylvania blasted as a "seditious abuse of the judicial process. Overturning Pennsylvania's election results is contrary to any metric of fairness and would do nothing less than deny the fundamental right to vote to millions of Pennsylvania's citizens," the state's Democratic attorney general, Josh Shapiro, wrote in response to Texas GOP Attorney General Ken Paxton's bid to toss out the presidential election results in Pennsylvania, Wisconsin, Georgia and Michigan. From: <https://www.nbcnews.com/politics/white-house/trump-meet-state-attorneys-general-after-joining-supreme-court-election-n1250678> --accessed on 1/3/2021

Subsequent to the Court's rejection of the case under which the Amicus was filed, Rep. Bergman, and about 140 other members of the US House stated publically that they would, once again, unconstitutionally, on January 6, 2021, seek to overthrow the results of the 2020 election, an election that the Citizen Petitioners participated in. Events of that day, clearly show that Rep. Bergman did indeed seek to have the House overturn the results of the election in Michigan, in violation of the Constitution, including, we must presume, those votes cast by Petitioners in the 1st District of Michigan, where all of the Petitioners are registered to vote **—after the armed seditionists (his co-conspirators) were removed from the Capitol on January 6, 2021, clearly an act of giving “aid and comfort” to the President and his armed mob of insurrectionists.**

House Speaker Nancy Pelosi issued a statement on December 11, 2020, that called signing the amicus brief an act of "election subversion." Additionally, Pelosi reprimanded Bergman and the other House members who supported the lawsuit: "The 126 Republican

Members that signed onto this lawsuit brought dishonor to the House. Instead of upholding their oath to support and defend the Constitution, they chose to subvert the Constitution and undermine public trust in our sacred democratic institutions." "Pelosi Statement on Supreme Court Rejecting GOP Election Sabotage Lawsuit" (Press release. Speaker Nancy Pelosi. December 11, 2020).

We ask the Court to note that all of the Petitioners have sworn the same oath Speaker Pelosi refers to, some as members of the military, as has Rep. Bergman. Every individual who has ever served in the U.S. military --which includes many of the Petitioners and Rep. Bergman-- has taken an oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic"; the oath has no "expiration date."

New Jersey Representative Bill Pascrell, citing Section Three of the 14th Amendment, which this Writ directly addresses, called for Speaker Pelosi to not seat Bergman and the other Republicans who signed the Amicus Brief supporting the suit. Pascrell argued that "the text of the 14th Amendment expressly forbids Members of Congress from engaging in rebellion against the United States. Trying to overturn a democratic election and install a dictator seems like a pretty clear example of that." "Democrat asks Pelosi to refuse to seat lawmakers supporting Trump's election challenges". Williams, Jordan (December 11, 2020). *TheHill*.

Additionally, on Saturday, January 2, 2021, Rep. Louie Gohmert (R-Texas) reacted to the dismissal of his lawsuit against Vice President Pence (asking the Court to order the Vice President to overturn the election), telling Newsmax that a court's refusal to force Pence to overturn the presidential election results essentially served as a call to Americans to incite violence in the streets. "The bottom line is the court is saying, 'We're not going to touch this.

You have no remedy,'" Gohmert told Newsmax. "Essentially, the ruling would be 'You have to go to the streets and be as violent as antifa, BLM,'" he added.

From <<https://thehill.com/homenews/house/532407-gohmert-talks-of-violence-in-streets-after-his-lawsuit-is-dismissed>>.

Trump's "Inciting Insurrection" Speech. Given at a rally on January 6, 2021, that the President said was aimed at preventing the certification of Biden's win (extracts; the speech was 1:13 long):

...We want to be so respectful of everybody, including bad people. We're going to have to fight much harder and Mike Pence is going to have to come through for us. If he doesn't, that will be a sad day for our country because you're sworn to uphold our constitution. Now it is up to Congress [including Rep. Bergman] to confront this egregious assault on our democracy [which he did at Trump's request]. After this, we're going to walk down and I'll be there with you. We're going to walk down. We're going to walk down any one you want, but I think right here. We're going walk down to the Capitol, and we're going to cheer on our brave senators, and congressmen [including Rep. Bergman] and women. We're probably not going to be cheering so much for some of them because you'll never take back our country with weakness. You have to show strength [through armed insurrection], and you have to be strong.

We have come to demand that Congress [including Rep. Bergman] do the right thing and only count the electors who have been lawfully slated, lawfully slated. I know that everyone here will soon be marching over to the Capitol building to peacefully and patriotically make your voices heard. Today we will see whether Republicans [including Rep. Bergman] stand strong for integrity of our elections, but whether or not they stand strong for our country, our country. Our country has been under siege for a long time, far longer than this four-year period. ...

And that's part of the reason that many people don't like us, because we've done too much, but we've done it quickly. And we were going to sit home and watch a big victory. And everybody had us down for a victory. It was going to be great. And now we're out here fighting [through armed insurrection]....Today, we see a very important event [armed insurrection] though, because right over there, right there, we see the event [armed insurrection] going to take place. And I'm going to be watching, because history is going to be made. We're going to see whether or not we have great and courageous leaders [like Rep. Bergman] or whether or not we have leaders that should be ashamed of themselves throughout history, throughout

eternity, they'll be ashamed. And you know what? If they do the wrong thing, we should never ever forget that they did. Never forget. We should never ever forget....

I want to thank the more than 140 members of the House [including MI-1 Rep. Bergman]. Those are warriors. They're over there working like you've never seen before, studying, talking, actually going all the way back, studying the roots of the Constitution, because they know we have the right to send a bad vote that was illegally got, they gave these people bad things to vote for and they voted, because what did they know? And then when they found out a few weeks later... Again, it took them four years to devise history. And the only unhappy person in the United States, single most unhappy, is Hillary Clinton because she said, "Why didn't you do this for me four years ago? Why didn't you do this for me four years ago? Change the votes! 10,000 in Michigan. You could have changed the whole thing!" [which is what Rep. Bergman called for later that evening, after the coup-plotters were removed from the Capitol] ...

In Michigan quickly, the secretary of state, a real great one, flooded the state with unsolicited mail-in ballot applications, sent to every person on the rolls, in direct violation of state law. More than 17,000 Michigan ballots were cast by individuals whose names and dates of birth matched people who were deceased. In Wayne County, that's a great one. That's Detroit. 174,000 ballots were counted without being tied to an actual registered voter. Nobody knows where they came from. Also in Wayne County, poll watches observed canvassers re-scanning batches of ballots over and over again, up to three or four or five times. In Detroit, turnout was 139% of registered voters. Think of that. So you had 139% of the people in Detroit voting. This is in Michigan, Detroit, Michigan. ... In one Michigan County alone, 6,000 votes were switched from Trump to Biden and the same systems are used in the majority of states in our country. ... [this is what Rep. Bergman will be calling for later today]

If we allow this group of people to illegally take over our country, because it's illegal when the votes are illegal, when the way they got there is illegal, when the States [like Bergman's Michigan] that vote are given false and fraudulent information.. ...

Nobody, until I came along, had any idea how corrupt our elections were. And again, most people would stand there at 9:00 in the evening and say, "I want to thank you very much," and they go off to some other life, but I said, "Something's wrong here. Something's really wrong. Can't have happened." And we fight. We fight like Hell [through armed insurrection] and if you don't fight like Hell [through armed insurrection], you're not going to have a country anymore. ...

So we're going to, we're going to walk down Pennsylvania Avenue, I love Pennsylvania Avenue, and we're going to the Capitol and we're going to try [through armed insurrection] and give... But we're going to try and give our Republicans, the weak ones, because the strong ones [like Rep. Bergman] don't need any of our help, we're going to try and give them the kind of pride and boldness that they need to take back our country [through armed insurrection]. ...

So let's walk down Pennsylvania Avenue. I want to thank you all. God bless you and God bless America. Thank you all for being here [to engage in this armed insurrection, this act of sedition], this is incredible. Thank you very much. Thank you [Rep. Bergman].

From --<https://www.rev.com/blog/transcripts/donald-trump-speech-save-america-rally-transcript-january-6>

The Editorial Board of the *Detroit Free Press* printed an op-ed in their Jan. 10, 2021, edition. A few excerpts that refer to Rep. Bergman are given here:

As recently as last Thursday, hours after armed rioters incited by the president had been routed from the U.S. Capitol, some Michigan lawmakers were persevering in their efforts to delegitimize Joe Biden's victory. U.S. Reps. Lisa McClain (R-Bruce Twp.), Jack Bergman (R-Watermeet) and Tim Walberg (R-Tipton) all voted to disallow presidential electors certified by Republican-majority state legislatures in Arizona and Pennsylvania.

The Congressional Co-conspirators -- In the flood of specious legal claims asserted (and repeatedly rejected by state and federal courts) in the course of the president's unsuccessful campaign to overturn the election, the most outrageous may have been Texas Attorney General Ken Paxton's attempt to block Michigan, Georgia, Pennsylvania and Wisconsin from casting their state's Electoral College votes for Biden.

In a lawsuit filed directly with the U.S. Supreme Court, Paxton asked justices to let the four state's legislatures — all controlled by Republican majorities — decide how to allocate their electoral votes. ... The court dismissed the Paxton's initiative in an unsigned order — but only after four of Michigan's seven GOP congressmen — Bergman, Huizenga, Moolenaar and Walberg — had signed a brief urging the court to effectively disenfranchise 2.8 million Michigan voters. ... None of the four explained why their own elections should stand if justices agreed that Michigan's ballot count had been fatally flawed.

The Bitter-Enders -- By the time police had expelled rioters from the U.S. Capitol on Wednesday evening, allowing Congress to resume its constitutionally prescribed duty to certify the Electoral College votes from each state, most Republican House members and

all but a handful of GOP senators had lost their enthusiasm for a last-ditch effort to reverse Biden's victory by rejecting presidential electors certified by several battleground states. ... But Bergman, McClain and Walberg joined a splinter group of Republicans who persisted in rejecting certified election results from Arizona and Pennsylvania. Both states' presidential electors were pledged to Biden. ... The renegade House members sought to accomplish what rioters had been unable to: an unprecedented usurpation of the states' constitutional authority to oversee their elections, and the negation of Biden's election victory. Like the mob's attempted coup, the congressional plot that Bergman, McLain and Walberg joined fell short. ... Their efforts to decertify Michigan's elector college votes fell short, as well, but only because no Senator would sign on to the effort.

The Argument for the Writ

Pursuant to Rule 21(c), Petitioners file this Writ of Mandamus to compel Speaker Pelosi to schedule a vote to lift Rep. Bergman's Section-3-14th-Amendment "disqualification."

The power of a district court to compel official action by mandatory order is limited to the enforcement of nondiscretionary, plainly defined, and purely ministerial duties, such as those plainly described in 14-3. See *Decatur v. Paulding*, 39 U.S. (1 Pet.) 496, 514-17 (1840); *Work v. Rives*, 267 U.S. 175, 177 (1925); *Wilbur v. United States*, 281 U.S. 206, 218 (1930). An official action is not ministerial unless "the duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command," as detailed in 14-3. *Wilbur v. United States*, *supra*; See *United States ex rel. McLennan v. Wilbur*, 283 U.S. 414, 420 (1931); *ICC v. New York, N.H. & H.R. Co.*, 287 U.S. 178, 204 (1932); *United States ex rel. Girard Trust Co. v. Helvering*, *supra*; *Will v. United States*, 389 U.S. 90 (1967); *Donnelly v. Parker*, 486 F.2d 402 (D.C. Cir. 1973).

Of course, this Writ would not be complete without including more on the seditious actions by "protesters" who stormed the Capitol on Jan. 6, 2021, after the President incited them to armed insurrection, resulting in widespread damage and the death of at least five people,

including one woman who was shot and killed by Capitol Police as the crowd breached the building, and a Capitol Police officer, Brian D. Sicknick, who died of injuries sustained in the insurrection.

Although Petitioners could cite dozens of statements alleging sedition in direct violation of 14-3, we add an excerpt from one to this filing; a press release from the National Association of Manufacturers. Wherein we quote: “This is not law and order. This is chaos. It is mob rule. It is dangerous. This is sedition and should be treated as such. The outgoing president incited violence in an attempt to retain power, and any elected leader defending him [like Rep. Bergman] is violating their oath to the Constitution and rejecting democracy in favor of anarchy.”

In summary, Section Three of the Fourteenth Amendment disqualifies an individual from serving as a state or federal official if that person has "engaged in insurrection or rebellion against" the United States, “or given aid or comfort to the enemies thereof.” Although the clause was written in the context of the Civil War, it certainly applies to members of the current (or future) rebellions or insurrections against the United States.

It should be noted that in addition to Section 3 of the 14th Amendment, cited above, 5 U.S. Code § 7311, states: “An individual may not accept or hold a position in the Government of the United States [if he] advocates the overthrow of our constitutional form of government.” 5 U.S. Code § 7311 explicitly makes it a federal criminal offense (and a violation of oath of office) for anyone, including members of Congress, to “advocate the overthrow of our constitutional form of government.” “Advocate” is defined as “defend by argument before a tribunal [like the US Congress, as Bergman did], or the public [like the mob at the Capitol, as

Donald Trump did] support or recommend publicly.” Arguing publically to deny the results of votes as cast, as was done by Rep. Bergman, is a clear deprivation of rights under the Constitution (citation above). The lawsuit, to which Bergman (and 128 others) attached himself to by signing on to the amicus brief, was brought because the signers refused to obey the law of the Constitution to count the votes fairly. Such refusal obviously establishes that the objective of the 129 members of Congress was to overthrow our form of government by establishing they (these rogue members of Congress) can disobey the law of the Constitution and thus overthrow our constitutional form of government. Thus, regardless of whatever arguments for such opposition were presented by their legal counsel, and themselves, to justify their opposition, the criminal violation of the oath of office occurred at the moment that the members of Congress joined the lawsuit to publicly declare their opposition to obeying the voting laws of the Constitution. (See *Walker v Members of Congress*, 2004).

Penalties for violations of oath of office include: (1) removal from office and; (2) confinement or a fine. Furthermore, the Article of Impeachment recently approved by the House against Donald Trump (with trial pending in the Senate) specifically mentions Section 3 of the 14th Amendment among those violations of the Constitution warranting Impeachment, removal from office, and a bar against holding public office in the future. Clearly, if violations of the 14th Amendment warrant removal from office of the President of the United States, these identical violations warrant removal of Rep. Bergman. Here’s the relevant text from that Article of Impeachment: “In the months preceding the Joint Session, President Trump [and Rep. Bergman] repeatedly issued false statements asserting that the Presidential election results were the product of widespread fraud and should not be accepted by the American people or certified by State or Federal officials.”

It must also be noted that the First Amendment gives citizens the right to petition the government for a redress of grievances which quite obviously includes demands for an exercise by the government of its powers, as detailed in Section 3 of the 14th Amendment, in furtherance of the interest and prosperity of the Petitioners and of their views on politically contentious matters, including that which is addressed in this Writ –the right of Jack Bergman to remain a member of the House of Representatives in light of his giving “aid and comfort” to the armed insurrectionists who attempted a coup, incited by President Trump, on January 6, 2021 (and further calls to repeat same until the “bitter end”). This “1st Amendment Petition” is presented as a form of civil action that Petitioners hope will result in the Court issuing a Writ directing the Speaker of the House to act as specified in Section 3 of the 14th Amendment.

Relief Requested

Of course, all of this is virtually unprecedented (the Amicus, Gohmert’s case, the call to armed insurrection, the “aid and comfort” given to the armed insurrectionists by Rep. Bergman and others, including the open, repeated, and flagrant calls by Bergman and others to nullify the vote of the People). And, after the attempted coup by Trump supporters on January 6, 2021, aided and abetted by Rep. Bergman (and well over 100 other Representatives), the country hangs on the precipice of a Constitutional Crisis as this Writ is being written, despite the fact that Joe Biden has just been sworn in as the 46th President of the United States. This “armed insurrection,” this sedition, this treason, sorry to say, is far from over, and Rep. Bergman continues to be one of its most ardent instigators and supporters.

Consequently, it appears that the only remedy to this “armed insurrection,” this sedition, this treason, would be for this Court to issue the Writ as requested, ordering Speaker Pelosi to

have the House immediately vote to lift the "14-3 disqualification" of Rep. Bergman (R-MI-1).

Of course, the Court may *sua sponte* grant any other relief it deems just and appropriate.

Proof of Service

On, January 21, 2021, I served the attached Writ by placing a true copy in the United States mail enclosed in a sealed envelope with postage fully prepaid, addressed as follows:

US Western District Court
399 Federal Bldg
110 Michigan St NW
Grand Rapids, MI 49503

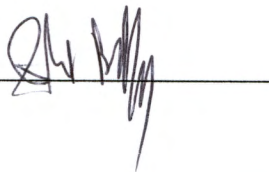
Nancy Pelosi, Speaker of the House (under separate cover)
1236 Longworth H.O.B.
Washington, DC 20515

Attorney General Dana Nessel (under separate cover)
G. Mennen Williams Building
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 21, 2021, at Sault Ste. Marie, Michigan.

I respectfully request that the Clerk of the Court immediately file this Writ in the US Federal Court for the Western District of Michigan.

Philip C. Bellfy, PhD Signature



5759 S. Ridge Rd.
Sault Ste. Marie, MI 49783
906-632-8060
phil.bellfy@gmail.com



Phil Bellfy, PhD
Sault Tribe Lay Advocate
5759 S. Ridge Rd.
Sault Ste. Marie, MI 49783



1000



49503

U.S. POSTAGE PAID
FCM LG ENV
SAULT STE MARIE, MI
49783
JAN 29, 21
AMOUNT

\$1.40

R2304H109791-10

US WESTERN DISTRICT COURT
399 FEDERAL BLDG.
110 MICHIGAN ST. NW
GRAND RAPIDS, MI 49503

SAULT STE MARIE, MI 49783
JAN 29, 21
AMOUNT
\$1.40
R2304H109791-10